

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

CHARLES LINDBERG GEORGE, JR.

Respondent

HUDALJ 92-1769-DB

Decided: July 28, 1992

Charles W. Baker, Esq.
For Respondent

Philip A. Kesaris, Esq.
For the Department

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose pursuant to 24 CFR 24.100 *et seq.* as a result of an action taken by the Assistant Secretary for Housing-Federal Housing Commissioner of the U.S. Department of Housing and Urban Development ("the Department" or "HUD") on October 1, 1991, proposing to debar Charles Lindberg

George, Jr. ("Respondent"). If debarred, Respondent would be prohibited from participating in covered transactions as either a participant or principal at HUD and throughout the Executive Branch of the Federal government and from participating in procurement contracts with HUD.

The action taken by HUD was based on Respondent's conviction for violation of 18 U.S.C. sec. 1344. HUD proposed to debar Respondent for a period of five years beginning October 1, 1991. Respondent was also suspended pending the outcome of any hearing on the proposed debarment.

Respondent requested a hearing on the proposed debarment by a letter received by HUD's Inspector General and Administrative Proceedings Division on January 27, 1992. Because the action is based solely upon a conviction, the hearing in this case is limited under 24 CFR 24.313(b)(2)(ii) to submission of documentary evidence and written briefs. An Order dated February 25, 1992, established a schedule for the filing of briefs. In compliance with that schedule, as amended by subsequent order, the Government filed its brief on March 25, 1992, and Respondent filed his reply brief on April 30, 1992. Having received no further pleadings, this matter is ripe for decision.

Findings of Fact

1. During the mid-1980s, Respondent was a builder and developer of HUD/FHA-financed homes in the Little Rock, Arkansas area. Gov't. Brief at 1; Resp. Reply Brief at 1.

2. Between October 1986 and February 1987, Respondent was the majority stockholder, Chairman of the Board, and Chief Executive Officer of Little Rock Mortgage Company, Inc. ("LRMCO"), located in Little Rock, Arkansas. Gov't. Ex. 1.

3. The Bank of Cabot ("the Bank"), located in Cabot, Arkansas, was a financial institution whose deposits were insured by the Federal Deposit Insurance Corporation ("FDIC"). *Id.*

4. On or about January 16, 1987, Respondent executed a scheme and artifice to defraud the Bank by means of false and fraudulent pretenses, representations and promises.¹ As part of the scheme and artifice, Respondent,

¹As discussed *infra*, Respondent was charged with execution of the scheme and artifice on eight separate occasions, but pleaded guilty and was convicted only with respect to the January 16, 1987 transaction. Because the cause relied upon by the Government for Respondent's proposed debarment is that conviction, the findings of fact upon which this initial

acting on behalf of LRMCO, made arrangements with the Bank for the Bank to provide \$260,517.86 in interim financing on a mortgage made by LRMCO. Respondent represented and caused to be represented to the Bank that in return for providing interim financing, the Bank would receive payment from the permanent lender, Chemical Mortgage Co. of Jacksonville, Florida. As a result of those representations, and upon receipt of appropriate loan documents from LRMCO, the Bank provided interim financing for LRMCO by crediting LRMCO's account with the Bank. Respondent sent and caused to be sent to the Bank the request for interim financing which reflected that the Bank would receive payment from the permanent lender. Respondent thereafter diverted and caused to be diverted the funds that the permanent lender was to have sent to the Bank. The funds were diverted from the Bank to Respondent's bank account with Worthen Bank & Trust Co. *Id.*

5. On March 21, 1988, an eight-count Indictment was filed in the United States District Court for the Eastern District of Arkansas, charging Respondent with violating 18 U.S.C. sec. 1344 in connection with the scheme and artifice described above. The Indictment charged Respondent with eight separate instances of diversion of funds, including the particular instance described in finding no. 4, above. That diversion was listed as Count 5. *Id.*

6. Respondent entered a plea of guilty to Count 5 of the Indictment on March 30, 1989. The remaining counts of the Indictment were dismissed on motion of the United States Attorney. Gov't. Ex. 2.

determination is based are limited to Respondent's conduct in connection with the January 16, 1987 transaction.

7. On March 30, 1989, the Federal District Court sentenced Respondent to 30 months incarceration² and fined Respondent in the amount of \$15,000.00, payable in installments after his release from incarceration. The Court also ordered Respondent to pay a Special Assessment of \$50.00 as required by statute. *Id.*

8. As of February 26, 1992, Respondent had paid \$300.00 of the \$15,050.00 owed pursuant to his sentence. Respondent's last payment of \$25.00 had been received on July 24, 1989. Gov't. Ex. 3.

9. While in prison Respondent participated in a suicide watch program for a fellow inmate in distress and Respondent was an Educational Tutor while at the Federal prison camp. Resp. Reply Brief at 4 and Resp Ex. "Prison Letters."

10. Respondent filed for bankruptcy during July of 1987 and received his Discharge of Debtor on August 30, 1990. Resp. Reply Brief at 2 and Resp. Ex. "Discharge Order."

Discussion

1. Respondent is Subject to Debarment Under 24 CFR Part 24

Respondent, as a builder and developer of HUD/FHA-financed homes, engaged in HUD/FHA-insured mortgage transactions, and is thereby considered a "participant" and "principal" in "covered transactions." 24 CFR 24.105(m) and (p), 24.110(a)(1). Respondent is therefore subject to HUD's debarment regulations.

2. Respondent's Conviction Constitutes Cause for Debarment

Pursuant to the Department's debarment regulations, HUD may institute debarment proceedings based on a conviction for the following causes:

- (1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction. 24 CFR 24.305(a)(1).

²The Federal District Court's Judgment and Probation Commitment Order stated that the matter did not fall under the Sentencing Guidelines, 28 U.S.C. sec. 994, *et seq.* Gov't. Ex. 2.

(2) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person. *Id.* at 24.305(a)(4).

Respondent does not challenge the existence of cause for debarment. Resp. Reply Brief at 1. Indeed, 24 CFR 24.313(b)(3) provides that cause for debarment must be established by a preponderance of the evidence, a standard deemed met by proof of conviction. As Respondent was convicted of diverting funds from an FDIC-insured bank, the Department has satisfied its burden that cause for debarment exists under 24 CFR 24.305(a)(1) and (4).³

3. A Three Year Period of Debarment is Warranted

The existence of cause does not necessarily require that a respondent be debarred. Debarment is a discretionary action and it must be determined whether a respondent's conduct is serious, whether debarment is necessary to protect the public interest and whether there are mitigating factors. See 24 CFR 24.115(a),(b) and (d). The respondent has the burden of proof for establishing mitigating circumstances. *Id.* at 24.313(b)(4). The period of debarment must be commensurate with the seriousness of the cause(s) and, if suspension precedes debarment, the suspension period shall be considered in determining the debarment period. *Id.* at 24.320(a). The period of debarment for causes such as those present in this case generally should not exceed three years; however, where circumstances warrant, a longer period of debarment may be imposed. *Id.* at 24.320(a)(1).

The debarment process is not intended as a punishment, rather, it protects

³In its notice of proposed debarment, the Department included as causes 24 CFR 24.305(a)(3) and 24.305(d). Pursuant to section 24.305(a)(3), HUD may institute a debarment proceeding based on a conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice. Pursuant to section 24.305(d), a debarment may be based on "[a]ny other cause of so serious or compelling a nature that it affects the present responsibility of a person." The Government, however, does not assert either section 24.305(a)(3) or 24.305(d) in its brief as cause for Respondent's debarment. Moreover, having concluded that cause exists under sections 24.305(a)(1) and 24.305(a)(4), I need not reach whether cause also exists under sections 24.305(a)(3) and 24.305(d).

governmental interests not safeguarded by other laws. *Id.* at 24.115(b). See also *Joseph Constr. Co. v. Veterans Admin.*, 595 F. Supp. 448, 452 (N.D. Ill. 1984). These governmental and public interests are safeguarded by precluding persons who are not "responsible" from conducting business with the Federal Government. See 24 CFR 24.115(a).

"Responsibility" is a term of art which encompasses business integrity and honesty. *Id.* at 24.305. See also *Gonzalez v. Freeman*, 334 F.2d 570, 573 & n.4, 576-77 (D.C. Cir. 1964). Determining "responsibility" requires an assessment of the risk that the government will be injured in the future by doing business with a respondent. See *Shane Meat Co. v. U.S. Dep't of Defense*, 800 F.2d 334, 338 (3d Cir. 1986). That assessment may be based on past acts, including a previous criminal conviction. See *Agan v. Pierce*, 576 F. Supp. 257, 261 (N.D. Ga. (1983); *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278 (D. Colo. 1989).

The type of conduct engaged in by Respondent, which is the cause of his debarment, justifies a period of debarment that generally should not exceed three years. 24 CFR 24.320(a)(1).⁴ Based upon this guideline HUD has the burden of proving Respondent's conduct was such as to justify increasing the standard three year debarment period and Respondent has the burden of establishing sufficient mitigating circumstances to justify shortening the three year debarment period.

The Department asserts that a five year period of debarment is appropriate in this case because the facts underlying the bank fraud charge of which Respondent was convicted "evidence a complete lack of honesty and integrity" Gov't Brief at 7. The Department also points out that Respondent has failed to pay his fine.

Other than reciting the facts of Respondent's conviction, the Department has failed to show that Respondent's conduct was sufficiently different or egregious to justify departing from the standard three year period of debarment. Similarly, Respondent's failure to pay his fine when he was broke and bankrupt hardly justifies increasing the debarment period. As noted, "it was nigh on to

⁴ Neither Respondent nor the Department referred to the three year debarment standard in their briefs.

impossible to earn any income while in the hoosegow." Resp. Reply Brief at 2.

The Department has failed to establish that Respondent's conduct justifies increasing the standard period of debarment from three years, as recommended in 24 CFR 24.320(a)(1), to five years.

Respondent argues that because he engaged in laudable conduct while in prison, the period of debarment should be reduced. In this regard it is pointed out that Respondent participated in a suicide watch program for a fellow inmate in distress and was an Educational Tutor in the Federal Prison Camp. Although this conduct was laudable and indicates an attempt by Respondent to rehabilitate himself, it does not have direct bearing on whether he is presently "responsible;" that is, whether he currently possesses the requisite integrity and honesty to do business with the government.

Neither party has established that the standard three year debarment period is inappropriate. Noting the seriousness of the conduct engaged in by Respondent, the deceit involved, and the amount of money involved, a three year period of debarment is appropriate to protect governmental interests.

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that cause exists to debar Charles Lindberg George, Jr., from primary covered transactions and lower-tier covered transactions for three years from the date of his suspension on October 1, 1991.

SAMUEL A. CHAITOVITZ
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DETERMINATION issued by SAMUEL A. CHAITOVITZ, Administrative Law Judge, in HUDALJ 92-1769-DB, were sent to the following parties on this 28th day of July, 1992, in the manner indicated:

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